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| 10/553,210 | 10/13/2005 | Herbert Wirz | 2360-0429PUS1 | 1244 |
| 2292 7590 06/25/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747 | | | | |
| EXAMINER KEENAN, JAMES W | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3652 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/553,210

Applicant(s)

WIRZ ET AL.

Examiner

James Keenan

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 10/13/05
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Figure 6A should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it is over 150 words, is not presented on a separate sheet, and contains legal phraseology such as "said".

Correction is required. See MPEP § 608.01(b).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, terminology such as "as desired", "in particular", "it being possible", and "characterized in that" is vague and fails to clearly and adequately set forth the desired scope of the invention.

Similar language throughout the remaining claims, including "and/or", preferably", "constructed in such a way" is similarly indefinite.

Also, it is not clear if claim 13 is meant to further limit claim 1 or is intended as an independent claim, it being noted that subparagraphs (a)-(c) repeat verbatim portions of claim 1.

In claim 15, it is not clear if the "plurality of storage units" are separate elements from the storage unit set forth in claim 13 or if they merely further define same.

Claims 16-21, while presented as "A method ...", are not written in proper method terminology (i.e., with active method steps), and thus the scope of these claims can not be determined.

The preamble of claim 21 is inconsistent with that of claim 16 from it apparently depends.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3/1-5/1, 6, 7, 10, 12, 13, 16, 17, 19, and 21, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Peltomaki et al (EP 767113), cited by applicant.

Peltomaki shows a warehouse arrangement comprising a collecting device 20 movable over a storage area 3 by a robot 12, intermediate store 21 arranged on the collecting device for accommodating objects successively picked from the storage area in stacks or partial stacks in separate pick-up steps, and a gripping device 25, 26 arranged on the collecting device for lifting stacks or partial stacks, the gripping device being vertically movable and formed by “mutually opposite blades”, as broadly claimed.

Re claim 3, the intermediate store is formed by “mutually opposite side beams”, as seen in fig. 3.

Re claim 4, the blades of the gripping device are mounted in the side beams “such that they can be moved vertically”, as broadly claimed.

Re claim 5, the vertical planes of the blades and side beams enclose a space with a rectangular cross section.

Re claim 6, note “holding elements” on the lower edges of the blades (fig. 3).

Re claim 7, the intermediate store is arranged in a fixed location (at least horizontally) above the storage area, as the objects are picked up.

Re claim 10, note “calibration parts” 23, 24, as broadly claimed.

Re claim 12, absent any structural limitations, nothing precludes any two or more portions of the collecting device from being considered "a plurality of intermediate stores".

Re claim 13, absent any structural limitations, outgoing conveyor 14 is considered to be "a storage unit which can be moved independently" and to which objects in the intermediate store are directly transferred (col. 4, lines 6-11 and 50-52).

Limitations set forth in method claims 16, 19, and 21, as indefinitely claimed, are believed clearly met by the apparatus of Peltomaki, especially since these claims essentially mirror the language of claims 1, 6, and 13, respectively.

Re claim 17, the blades of the gripping device are considered to be "extended out of the collecting device", as broadly claimed, while the intermediate store remains in a fixed location.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki.

Peltomaki does not show a vertically movable element at the upper end of the intermediate store to exert a downward force on the topmost object to stabilize the stack.

However, the examiner takes Official Notice that it is generally well known in the stacking art to utilize a vertically movable device to exert a force on the topmost object in a stack to stabilize the stack, and in view thereof, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Peltomaki with such a device as an obvious design expediency.

Re claim 11, although Peltomaki's calibration parts are not C-shaped, the particular shape is considered to be a design choice well within the level of ordinary skill in the art.

10. Claims 2, 9, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Blakeley (US 2,735,713).

Peltomaki does not show the collecting device to comprise mutually opposite halves movable relative to each other.

Blakeley shows a device for collecting a plurality of stacked objects comprised of two mutually opposite halves B and C which are moved relative to each other to collect the objects therebetween.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Peltomaki by constructing the collecting with relatively movable, mutually opposite halves, as shown by Blakeley, as this would simply be an alternate equivalent, art recognized means of collecting vertically stacked

articles, the use of which in the apparatus of Peltomaki would require no undue experimentation and produce no unexpected results.

This also applies to corresponding method claim 20.

Re claims 9 and 18, note securing/holding elements 20 of Blakeley.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Beutler et al (US 6,379,096).

Peltomaki does not show the storage unit to comprise a vertical base part and two forwardly projecting holding parts between which objects can be picked up by the collecting device.

Beutler shows a storage unit 16b constructed in such a manner, as clearly seen in figs. 4-5, and which is independently movable relative to a gripping unit 40 which transfers articles directly to the storage unit.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Peltomaki by constructing the storage unit with a vertical base part and two forwardly projecting holding parts between which objects can be picked up by the collecting device, as shown by Beutler, as this would allow greater flexibility and access to the storage unit.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peltomaki in view of Beutler et al, as applied to claim 14 above, and further in view of Eisele (DE 2629718), cited by applicant.

Peltomaki as modified does not show the storage unit arranged on a separate portal bridge from the collecting device.

Eisele shows collecting device 8 and storage units 9 arranged on separate portal bridges and between which picked-up articles can be directly transferred.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Peltomaki by utilizing storage units on a separate portal bridge, as shown by Eisele, to provide greater storage flexibility.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Keenan/
Primary Examiner
Art Unit 3652

jwk
6/19/08